IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5358 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALUBEN JERAMBHAI MEHTA

Versus

DIST HEALTH OFFICER

Appearance:

MR SIRAJ GORI FOR MR PM RAVAL for Petitioner

MR DD VYAS for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/04/2000

ORAL JUDGEMENT

This petition is filed for quashing and setting aside the order at Annexure `I' dated 31st March, 1987 passed by the Midwife, Sub Centre Dhandhalpur , respondent No.3

herein terminating the services of the petitioner and for appropriate direction to the authorities to pay wages as per Annexure `J', office order, dated September 30, 1967 from April 1, 1966 to March 24, 1976.

The case of the petitioner was that she was employed as an Attendant under the District Health Centre, Surendranagar District Panchayat ,respondent No.1 and she was serving at Sub-Centre, Dhandhalpur at Primary Health Centre , Taluka Sayla. It was her case that she was paid a meagre amount of Rs. 15/- per month only. Payment of such paltry amount was arbitrary, unreasonable and violative of Articles 14, 16 and 19 of the Constitution. It was also stated that at several occasions, demand was made for regular pay scales and/or payment of reasonable amount of salary , but the respondent authorities did not pay heed to it. Ultimately, vide order dated March 31, 1987, Annexure `I', her services were terminated.

Rule was issued and today, the matter is called out for final hearing.

I have heard Mr. Siraj Gori for Mr. P.M.Raval for the petitioner and Mr. U.M.Panchal for Mr. D.D. Vyas of Vyas Associates for the respondent authorities.

It was contended by the learned counsel for the petitioner that the action of terminating the services of the petitioner was illegal, contrary to law and deserves to be set aside. The petitioner was appointed as early as on April 1, 1966 and she had worked for more than two decades. There was no reason, therefore, to terminate her services in 1987 without holding any inquiry and/or without assigning any reason.

It was also contended that though she was regularly appointed, she was paid a meagre amount of Rs. 15/- per month which amount was grossly inadequate and so unreasonable that it shocks conscience. The action must be held as exploitation of the petitioner by the respondent authorities.

Vide order dated 30th September, 1967, Annexure `J', several Attendants were appointed in various Primary Health Centres under Rajkot District Panchayat in a fixed salary of Rs. 72/- per month plus other allowances admissible under the Government Rules and Regulations and the same salary and admissible allowances must be paid to the petitioner who was serving under Surendranagar District Panchayat.

Finally, it was submitted that even on the basis of justice, equity and good conscience and doctrine of quantum meruit, the respondent authorities must be directed to make payment to the petitioner.

Mr. Panchal, on the other hand, supported the action of the respondent authorities. He raised a preliminary objections as to maintainability of the petition on the ground that there was delay and laches on the part of the petitioner regarding demand of payment of salary. He stated that though order of termination of service was passed on 31st March, 1987 and taking into account that action, the petition may not be said to be delayed, but the prayer for salary is belated inasmuch as the petitioner was serving since April 1, 1966 and demand was made in 1987 that she must be paid regular pay scales from 1966 onwards. Thus, there was delay of two decades and hence, the petition suffers from delay and laches.

On merits, Mr. Panchal submitted that the petitioner ignores the distinction between appointment as full timer and part timer. The petitioner was never appointed as full timer on regular basis but she was merely a part time employee and as and hwen she was required to accompany a mid-wife, as per circular issued by the bilingual State of Bombay dated April 7, 1960, she was entitled to Rs. 15/- per moth and such payment was made. He submitted that appointment order dated 30th September, 1967 , Annexure `J' was issued by the Rajkot District Panchayat for full time employees; whereas, the petitioner was working as part time Attendant in Surendranagar District Panchayat and hence, reliance placed on that order is ill-founded.

In the facts and circumstances, in my opinion, the petition deserves to be partly allowed. So far as termination is concerned, in the facts and circumstances, it cannot be said that the action was illegal or bad in law. When the petitioner was working as part time Attendant and her services were no longer required, she could be terminated.

Regarding payment of salary, it was contended by the respondents that as per Government Circular of erstwhile State of Bombay, an amount of Rs. 15/- per month was paid to her. But it cannot be ignored that the petitioner has worked for about two decades. Looking to the certificate issued by respondent No. 3, particularly, Annexure `C' ,dated 28th March, 1981, it is clear that during 1982-83, the petitioner used to accompany the midwife to various villages and she used to

work for about five hours. It was also stated that she used to remain present in delivery cases in villages and her work was satisfactory. In view of the said certificate, it is proved that the petitioner had worked with the midwife for five hours. In my opinion, therefore, it would be in the interest of justice if she is paid reasonable amount . In this connection, reliance was placed on Government Resolution, dated 24th March 1976 by the petitioner . Though the said resolution has not been made a part of the petition, a subsequent Resolution, dated 2nd September, 1983, has been produced on record, wherein reference to previous resolution was made . It was also stated that on the basis of hours of work,payment should be made. 1983 Resoution provides that if a perosn is workaing for five hours, he would be paid minimum wages of Rs. 237.50 per month.

One thing, however, may be clarified .In the affidavit in reply, it was stated that the petitioner was working as part time Attendant from April 1966, but she had not worked continuously. The petitioner had worked for the period from June, 1964 to 1972 and thereafter from December , 1975 to March, 1987. For the period from 1st January, 1973 to 30th November, 1975, she had not worked and some one else was working. Though that is denied by the learned advocate for the petitioner, obviously, this court cannot enter into disputed question of fact.

In view of the affidavit in reply filed by District Health Officer, Surendranagar District Panchayat, respondent No.1, it cannot be said that petitioner would be entitled to salary for the entire period.

In the facts and circumstances,therefore, the petition is partly allowed. Respondent authorities are directed to pay to the petitioner reasonable amount on the basis of resolutions/ circulars in force from time to time and if no such circulars/ resolutions/ policy decisions are there, on the basis of quantum meruit and minimum wages to be paid to similarly situated workman for the period for which she has , in fact, worked. Rule is made absolute. There shall be no order as to costs. Since the matter pertains to payment of small amount to a part time Attendant, a class IV employee, it is directed that the authorities will calculate the amount and make payment as expeditiously as possible, preferably within three months from the receipt of the writ.

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parekh